IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 153 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.I.I.C. LIMITED. - Petitioner(s)
Versus
SHODHAN SANSKAR LTD. - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR AC GANDHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/12/2006

ORAL JUDGMENT

1. Present Company Petition has been filed by the petitioner - Gujarat Industrial Investment Corporation Limited for an appropriate order of

winding up of the respondent company i.e. M/s. Shodhan Sanskar Limited under the provisions of the Companies Act; 1956.

2. It is the case on behalf of the petitioner that the respondent company owes to the petitioner as on December – 2000 an amount of Rs.3,29,95,103/- being the amount of outstanding dues with interest payable to the petitioner. It is further submitted that one M/s. Dhatu Sanskar Limited approached the petitioner for a term loan of Rs.60 Lacs and the petitioner sanctioned the financial assistance of Rs.60 Lacs on 13/20.11.1991 and the respondent company executed deed of joint and several guarantee on 8.1.1992 for Rs.60 Lacs in favour of the petitioner for repayment of the loan obtained by the principal borrower company. It is further submitted that the principal borrower has failed to repay the said amount and then the said company has gone under liquidation and an order of winding up of the said company is passed by this Court. It is submitted that as a guarantor, the respondent was required to repay the said amount which the respondent company has

neglected to pay and the dues payable to the petitioner have further gone up and as on December – 2000 Rs.3,29,95,103/- is to be recovered from the respondents. It is further submitted that inspite of repeated requests and demands and even statutory notice under Section 434 of the Companies Act; 1956, the respondent company has neglected to pay the said amount and therefore, the present Company Petition has been filed.

3. Shri Pahva, learned advocate appearing for the petitioner has submitted that the respondent company stood as a guarantor of loan and the principal debtor has committed the default and therefore, the respondent company was bound to pay the said amount and as the respondent company is not in a position to pay its dues, the company is required to be ordered to be wound up.

4. Shri A.C.Gandhi, learned advocate appears for the respondent company. An affidavit in reply has been filed. On going through the affidavit in reply it appears that there is no valid

defence on the part of the respondent company. It is not in dispute that the respondent company stood as a guarantor of principal debtor, who has gone under liquidation. Thus, as a guarantor the respondent company was required to make good the payment of loan and the interest thereon payable by the principal debtor. As held by the Delhi High Court in case of ***Ram Bahadue Thakur And Company V/s. Sabu Jain Limited*** reported in **1981(51) Company Cases Page-301**, the Company Petition against the company who stood as a guarantor of the loan is maintainable in case the principal debtor commits default. Inspite of the statutory notice served upon the respondent company, the respondent company has neglected to make the payment to the petitioner and as on December – 2000 the sum of Rs.3,29,95,103/- was due and payable to the petitioner. The respondent company has not come out with any proposal to make the payment nor it has been stated that the respondent company is a profit making company and is able to make the payment to its creditors. Under the circumstances, the respondent company has lost its financial

substratum and the respondent company is required to be would up under Sections 433 and 434 of the Companies Act; 1956.

5. For the reasons stated above, the respondent company – M/s. Shodhan Sanskar Limited is ordered to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby directed to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books, etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note, etc. No costs.

[M.R.Shah, J.]

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